

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION
NO. 01-80571

MILTON BUTCH JONES, RAYMOND CANTY,
EUGENE MITCHELL,

Defendants.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

2005 MAY 18 A.M. 42

FILED

MOTION HEARING
BEFORE THE HONORABLE JOHN CORBETT O'MEARA
United States District Judge
252 Theodore Levin U.S. Courthouse
231 Lafayette Boulevard West
Detroit, Michigan
Tuesday, April 5, 2005

FILE
COPY

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TO OBTAIN CERTIFIED TRANSCRIPT:

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1 Detroit, Michigan

2 April 5, 2005

3 10:18 a.m.

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5 THE CLERK: Calling case number 01-80571,
6 United States versus Jones.

7 THE COURT: Counsel please put their
8 appearances on the record, Mr. Allen?

9 MR. ALLEN: Good morning, your Honor, Joe
10 Allen and Regina McCullough on behalf of the United
11 States.

12 THE COURT: Good morning.

13 MR. GUREWITZ: Good morning, your Honor,
14 Harold Gurewitz, and seated at counsel table is Sharon
15 Dolente from my office.

16 THE COURT: Good morning to you.

17 Mr. Lustig?

18 MR. LUSTIG: Richard Lustig, on behalf of
19 Defendant Carty, who is seated in the wheelchair.

20 THE COURT: Good morning. And both the
21 Defendant Milton Jones and the Defendant Raymond Carty
22 are present in the courtroom at counsel table. And
23 we're here this morning on the Government's motion
24 requesting a hearing pursuant to 44 -- Rule 44(c),
25 which as we all know involves the problem, if there is

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1 one, which is before us, in relationship to the
2 representation by Mr. Lustig in 1983 of Mr. Jones,
3 which problem has been noticed as a special finding in
4 the second superseding indictment as an aggravating
5 factor which the Government might rely upon.

6 I have informed the parties that I will
7 sever the Government's action against Mr. Jones from
8 the other defendants for trial, and we have a trial of
9 September 6th now. But this problem of conflict was
10 renewed in Defendant Jones' motion for -- renewed
11 motion asserting the conflict. As I said, we will
12 grant a severance and this, the Defendants say --
13 Jones says and his papers says that that renders it
14 moot and that that should be the easy way to do it.
15 The Government says regardless of whether or not we
16 sever, they have a problem that they'd like to address
17 in one way or another here today.

18 I guess the first thing is I'm granting the
19 motion for a 44(c) hearing and this is it, which I
20 think everybody assumed anyway. If there's a problem
21 with that, let me know.

22 The Government says that the Defendant
23 asserts -- now asserts actual conflict and they have,
24 I think on Page 11 of their brief someplace -- here it
25 is. Whether the conflict is an actual conflict under

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1 the circumstances of the case, and that is contested
2 by Defendant Jones, who says something to the effect
3 that not an actual conflict but a possibility of a
4 conflict, which they believe is different. I think it
5 is too.

6 The Government wants, as a result of all of
7 this, the Court to have a hearing, which we're having,
8 at which the Defendants Canty and Jones will
9 acknowledge their individual understanding of the
10 nature of Mr. Lustig's successive representation, if
11 there's a conflict, and fully set forth any
12 individualized claim of actual conflict they assert,
13 if there is one.

14 I have read what we have here against the
15 Osborn case, which seems to be a strong statement of
16 some kind. But as I will say in a minute, I don't
17 think it's applicable here. Judge Moore there
18 certainly made clear that 44(c) is a serious
19 responsibility of the Court and the parties, and that
20 where there's a possibility of a conflict, if it could
21 be likely even, it's necessary for the Court at least
22 to inquire and get waivers and perhaps take other
23 action.

24 The first thing, based upon what I have seen
25 of the precedent, principally the Osborn case, but

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1 that's not the only thing, is that I do hereby rule
2 that 44(c) doesn't apply to subsequent
3 representations, as compared to joint representations.
4 It literally and specifically talks about joint
5 representations, which are clearly concurrent
6 representations of more than one defendant in a case,
7 where I think the Osborn case was husband and wife
8 were charged with some crime.

9 However, if 44(c) did apply, I then believe
10 that it may very well be a situation where waivers are
11 possible, and the Government puts it this way, that
12 the extended nature of this case, how long this has
13 been going on, that no casual proffer has been made of
14 a specific conflict, and the length of time since 1983
15 when Mr. Lustig first represented Mr. Jones, or at
16 least that's the representation of Mr. Jones we're
17 talking about here, that all of those things make it
18 waivable. And if 44(c) did or does apply, a grant of
19 severance of Mr. Jones from the other defendants,
20 according to the Defendant Jones, makes it moot, and I
21 almost agree with that, but not quite.

22 However, in case I'm wrong about any of
23 that, we're here today, and I think that it's
24 appropriate for the Court to make the inquiries that
25 Osborn suggests should be made to defendants, and

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1 that's what I purport to do -- what I propose to do
2 unless somebody's got a different idea they want to
3 argue to me. Mr. Gurewitz?

4 MR. ALLEN: Your Honor, if I may -- just
5 observations before the Court proceeds to
6 Mr. Gurewitz. I do agree with both Mr. Gurewitz's
7 motion and the Court's conclusion that 44(c) is
8 specifically designed to address joint representation.
9 The reason the Government has asked for a similar
10 inquiry is because the prospect of a conflict being
11 asserted, whether it resulted in severance or not.
12 And in my mind, it seemed that a conflict was being
13 used as a sword rather than a shield to obtain
14 severance. Since the Court has granted severance, and
15 I don't think it turned on the issue of conflict, I
16 think it turned on all of the issues in the case, that
17 part of the Government's request is really moot.

18 However, the inquiry that I believe needs to
19 be made as to Mr. Jones, if he concedes that there is
20 no actual conflict with a severance granted, I just
21 want to have Mr. Jones, through Mr. Gurewitz, however
22 the Court intends to do it, state for the record that
23 he is not moving to disqualify Mr. Lustig because he
24 does not believe Mr. Lustig's representation would
25 prejudice his defense.

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1 I understand conflicts are something that
2 can always change in the future, but we have proceeded
3 this far. We may disagree on how and when this issue
4 has been discussed before, but I think -- I don't
5 think anyone disagrees that we've all proceeded on the
6 premise that Mr. Lustig's presence in this case has
7 not caused prejudice up to this point, and that no
8 joint trial, it's my understanding that Mr. Gurewitz
9 and Mr. Jones agree that it will not cause prejudice
10 to him in a trial as to Mr. Jones.

11 But I do think we need a positive statement
12 that there is no request for disqualification, that he
13 understands that Mr. Lustig will forever retain a duty
14 of loyalty to him and a duty to keep his both
15 confidences and secrets. And if Mr. Lustig should
16 somehow intentionally or inadvertently breach that
17 duty, it will not result in prejudice in the trial --
18 in a separate trial, at least that's his belief at
19 this point, again, understanding that we don't have a
20 crystal ball and we don't know what the future will
21 hold.

22 THE COURT: One of the elements that -- I'm
23 not suggesting that the Government should do this, but
24 it certainly would remove a problem we thought of if
25 the Government stated on the record and assured the

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1 parties that it did not intend to call Mr. Jones in
2 any prosecution of Mr. Canty. If that happened, we'd
3 have a different situation from any we would have in
4 Mr. Jones' trial, since presumably Mr. Lustig would be
5 cross examining Mr. Jones.

6 MR. ALLEN: That is an issue which has
7 occurred to me over the course of this case many
8 times, your Honor. I can't ever say never, but the
9 Government has no intention at this time of calling
10 Mr. Jones in the separate trial of Mr. Canty. As the
11 Court understands, there's always some possibility
12 that things could change in the future. I don't think
13 it's a likelihood, but a possibility. If that were to
14 occur, just as Osborn addresses to the Court, we would
15 have a different situation.

16 I do not believe that will happen as this
17 case proceeds. I believe that Mr. Jones' case
18 proceeds, as the Court has docketed, first. We will
19 have a resolution of any conflict issues as to
20 Mr. Lustig's representation, as far as it impacts
21 Mr. Jones' trial, with the conclusion of the trial.
22 At that point, if there are still issues remaining
23 with Mr. Canty and Mr. Lustig's representation, we may
24 have to take a fresh look. But as we stand here
25 today, with the plan to proceed with separate trials,

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1 with Mr. Jones' trial proceeding first, I see no
2 instance in which -- I guess I'll flip it around, your
3 Honor, I see no instance in which the Government would
4 request, for example, Mr. Lustig to testify in any
5 proceeding against Mr. Jones. It sounds farfetched,
6 but that's --

7 THE COURT: Well, that's -- I haven't
8 thought much about that, but I don't see how that
9 would be possible.

10 MR. ALLEN: I don't believe it's possible
11 either, but what I want to get to here, your Honor,
12 and the reason we requested this hearing, is I want
13 all these issues addressed in the presence of the
14 Defendants so that we have a record of what I think
15 we've proceeded on for the past several years as this
16 case has gone forward, with specific statements from
17 each party addressing Mr. Carty. If the Court would
18 like me to proceed, there's a little difference, I
19 believe Mr. Carty has signed a written waiver, but I
20 would like the Court to specifically address those
21 issues.

22 THE COURT: I will ask the questions of
23 both, but I would like to hear from Mr. Gurewitz and
24 Mr. Lustig, if either of them have anything to say.

25 MR. GUREWITZ: I do, your Honor. And I

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1 appreciate your remarks with regard to the status of
2 the proceedings, and I believe that they're consistent
3 with what we have set forth in the brief that we've
4 filed in response to the Government's motion. You
5 indicated that your intention is to proceed with a
6 waiver proceeding.

7 There may be a difference of semantics, but
8 my positioned response to that is that I don't think
9 my client can actually waive anything. I think we can
10 acknowledge what the status of the record is and we
11 can talk about the future proceedings, but because of
12 the nature of what the issue is for Mr. Jones, I don't
13 think he can waive that, as distinguished from
14 Mr. Canty, who has a Sixth Amendment interest.

15 We're interested in protecting the
16 confidences and the secrets that Mr. Jones shared with
17 Mr. Lustig in the past, and it is a long time ago. If
18 there has been some kind of violation of that, and I
19 don't have any reason at all to believe that there has
20 been. I don't think we can waive it if we don't know
21 about it. And I'm not sure that we could waive it if
22 we did know about it. The past is behind us. As to
23 the future, I believe that --

24 THE COURT: You can waive the past, you
25 can't waive the future.

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1 MR. GUREWITZ: But we don't know about it,
2 that's the problem. Things have happened -- if
3 anything has happened, we don't know about it at the
4 present time. I don't have any information. I can
5 represent right now to the Court, that I don't have
6 any current information that would indicate that there
7 has been any breach of that confidentiality.

8 THE COURT: I suppose you could -- Mr. Jones
9 could waive as to anything within your knowledge at
10 this time.

11 MR. GUREWITZ: Well, I can represent there
12 isn't anything within my knowledge.

13 THE COURT: Waive on that basis then. If
14 something comes to your attention that you didn't know
15 before, then obviously you're in a different
16 situation.

17 MR. GUREWITZ: I think he can acknowledge
18 that. I don't know that waiver accomplishes -- to use
19 the word waiver in that circumstance gets anywhere.
20 All I can say is that perhaps it is to acknowledge
21 what I just said. As to the future, the conduct of
22 this case, particularly at trial, I believe that the
23 Court has accomplished what we wanted to effect, which
24 is to grant a severance. In that case, I believe that
25 the potential conflict goes away at a trial.

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1 Mr. Lustig isn't there, Mr. Canty isn't there, and
2 there's no problem.

3 With regard to the possibility that you
4 suggested that could raise another kind of issue if
5 Mr. Jones could be, and we're talking about a lot of
6 hypotheticals I think at this point, nothing more than
7 hypotheticals, but it's good at this kind of
8 proceeding to do that, one being that the possibility
9 of Mr. Jones testifying at a trial of Mr. Canty. I
10 think that there -- perhaps should be addressed also
11 that the possibility of Mr. Canty testifying in
12 Mr. Jones' trial. I don't have any reason to believe
13 at the present time that either would occur, but they
14 should be both acknowledged on the record I think.

15 We can't -- my client can't, I think, waive
16 a future disclosure of secrets or confidences for
17 Mr. Lustig. We don't have any reason at all to
18 believe that would occur, but I don't think my client
19 can waive that and doesn't know what that would be and
20 there's no way to accomplish that.

21 THE COURT: Well, I agree, your client can't
22 waive anything that hasn't happened yet.

23 MR. GUREWITZ: Right.

24 THE COURT: Well, all right. Let's proceed
25 on that basis. I guess that leaves one open question

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1 to Mr. Allen, which is the issue of whether Mr. Canty
2 would be called in Mr. Jones' trial.

3 MR. ALLEN: I have no reason to believe that
4 that will occur at this time, your Honor. If there
5 were again a change in circumstance, I think there
6 would be a need for a fresh inquiry on this whole
7 issue, but I do not believe that to be the case now.
8 It certainly isn't planned as we stand here today, and
9 I don't foresee it happening before September.

10 The one issue -- and again, Mr. Gurewitz has
11 an excellent point, sometimes you can't pigeonhole the
12 issues under the term conflict or lack of conflict.
13 The issue that I continue to see with respect to
14 Mr. Jones is I think he at the last proceeding made
15 clear, as opposed to a waiver, that he does not
16 consent to any disclosure by Mr. Lustig of client
17 secrets or confidences he may have from the 1983
18 representation for the purpose of Mr. Lustig
19 representing Mr. Canty.

20 That I think is an area the Court needs to
21 confirm directly with Mr. Jones, that he does not
22 consent to any disclosure or secrets or confidences to
23 enable Mr. Lustig to represent Mr. Canty, because that
24 is a factor in Mr. Canty's waiver. Mr. Canty must
25 understand that before he can proceed, that there may

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1 be -- I'm not saying there are, that there may be
2 secrets or confidences or information that Mr. Jones
3 22, 23 years ago related to Mr. Lustig that may -- I
4 know we're dealing with a lot of hypotheticals -- that
5 may assist him in his defense in this case. And that
6 if Mr. Jones does not consent to use or disclosure of
7 any of those, in other words, he holds Mr. Lustig to
8 his duty of loyalty.

9 That is a factor that Mr. Canty must take
10 into consideration in his waiver, and that's why I
11 think that we need this proceeding to make absolutely
12 clear that if Mr. Jones is not consenting to any -- I
13 won't use breach, he's not consenting to any
14 disclosure of any client confidences, that that's a
15 factor Mr. Canty must take into consideration in
16 proceeding.

17 And on the flip side, that Mr. Jones
18 reaffirms that he is not moving for disqualification
19 of Mr. Lustig on the remote, and I agree with
20 everyone, that it's a remote possibility that
21 Mr. Lustig may be faced with the dilemma of using
22 client confidences to best represent Mr. Canty.

23 THE COURT: I didn't understand what you
24 just said, is not moving for disqualification?

25 MR. ALLEN: The way I would frame it, your

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1 Honor.

2 THE COURT: On the remote possibility. How
3 can he know right now he's not moving for
4 disqualification?

5 MR. ALLEN: Well, if Mr. Jones believed that
6 there was a likelihood that Mr. Lustig would breach
7 his duty of loyalty, he should -- if he believes that
8 is a possibility, he should move for disqualification
9 and we should handle that issue right now. I don't
10 know if disqualification would be the appropriate
11 remedy, because I'm not sure where the prejudice is to
12 Mr. Jones. His remedy may well lie in a grievance
13 proceeding or something along those lines, but I want
14 these issues covered with Mr. Jones.

15 I want the Court to make the inquiry, if it
16 would, to make sure that Mr. Jones understands here
17 are the facts at issue, here are the principles at
18 issue in this representation, before we proceed to a
19 September trial date.

20 THE COURT: All right. Mr. Allen.

21 Mr. Gurewitz or Mr. Lustig, do either of you have
22 anything you want to say before I direct some
23 questions to Mr. Jones?

24 MR. LUSTIG: No, your Honor.

25 THE COURT: If you can hear me all right and

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1 I can hear you, you can sit right there, Mr. Jones. I
2 have a small hearing problem but usually is not severe
3 enough to require you to move. You heard all of this,
4 and I know you know and understand what's going on,
5 but I want you to -- I want you to confirm that. Do
6 you understand what we're talking about?

7 DEFENDANT JONES: Yes.

8 THE COURT: And you understand what
9 Mr. Allen just said, that he wants you to make it
10 clear on the record that you do not consent to
11 Mr. Lustig revealing anything of a confidential nature
12 that he learned when he represented you?

13 DEFENDANT JONES: Yes.

14 THE COURT: Is that the truth, you don't
15 consent to that?

16 DEFENDANT JONES: Yes.

17 THE COURT: And that based upon what you
18 know now at least, you do not intend to or believe it
19 likely that you will move for disqualification,
20 although it's understood that something might come up
21 in the future that you can't predict right now, do you
22 agree with that?

23 DEFENDANT JONES: Yes.

24 THE COURT: Well, Judge Moore wanted us to
25 talk about -- personally interview, which I'm doing

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1 now, personally address. I find as a matter of fact,
2 knowing Mr. Jones from other hearings and in other
3 ways, that he certainly is intelligent and understands
4 what we're talking about here. I don't know if there
5 is narrative, which the Osborn case mentioned too. We
6 don't have that, whether that's necessary or we can
7 get it from this case. Are you satisfied that
8 Mr. Jones has said what he has to say, Mr. Allen?

9 MR. ALLEN: I believe so, your Honor. The
10 only other inquiry, and I think it is redundant at
11 this point because Mr. Gurewitz has put it in his
12 pleading, that Mr. Jones personally believes that a
13 severance resolves any conflict, whether it falls
14 under Sixth Amendment or due process at this point,
15 the conflict that he raised --

16 THE COURT: That's sort of a legal
17 conclusion, isn't it?

18 MR. ALLEN: Well, does Mr. Jones believe
19 that a severance protects the issues that he raised in
20 his severance motion, because he used the term
21 conflict.

22 THE COURT: Do you agree, Mr. Gurewitz?

23 MR. GUREWITZ: Your Honor, that is a legal
24 position. I believe that a severance is required and
25 it provides the kind of protection we're asking for.

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1 Again, we can't speak to what may happen in the
2 future. We don't have any present belief that there
3 will be a problem in the future.

4 THE COURT: Mr. Jones, do you have any
5 reason to disagree with Mr. Gurewitz on that?

6 DEFENDANT JONES: No, sir.

7 THE COURT: Are you satisfied, Mr. Allen?

8 MR. ALLEN: Yes, sir.

9 THE COURT: All right. I'd like to turn to
10 Mr. Canty now. And first of all, can you hear me
11 Mr. Canty? Can you hear me?

12 DEFENDANT CANTY: Yeah.

13 THE COURT: You may have to speak up a
14 little so I can hear you. But first of all, I want to
15 counsel you, and I know Mr. Lustig has done this, on
16 the fact that you're entitled to effective assistance
17 of counsel, you understand that?

18 Answer me, please.

19 DEFENDANT CANTY: Assistance of counsel, you
20 say I'm entitled to assistance of counsel?

21 THE COURT: Effective assistance of counsel,
22 and that that would be someone who would represent you
23 wholeheartedly and without any reference to any
24 earlier representation he might have had in this case
25 of Mr. Jones, you understand you're entitled to that?

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1 DEFENDANT CANTY: Yeah.

2 THE COURT: And do you, based upon what
3 you've heard here this morning and I know you have --
4 you signed a document that says that, but do you want
5 to put on the record -- will you put on the record now
6 that you waive any assertion of any rights having to
7 do with the subsequent representation of Mr. Lustig by
8 you after -- 23 years ago he represented Mr. Jones, do
9 you waive that?

10 DEFENDANT CANTY: Yeah.

11 THE COURT: I find that for the record that
12 that is a knowing, intelligent and voluntary waiver
13 and therefore it's effective and proper as a waiver.
14 What further, Mr. Allen, do you think the record needs
15 to reflect?

16 MR. ALLEN: I would ask the Court to
17 specifically ask Mr. Canty if he understood that
18 Mr. Jones will not consent to disclosure of any
19 attorney-client secrets or confidential communications
20 by Mr. Lustig in the course of his representing
21 Mr. Canty. And so Mr. Canty understands, in theory,
22 there may be a way that Mr. Lustig could use
23 confidences, even though they're 23 years old, to
24 Mr. Canty's advantage in a trial, and that that is
25 what he is waiving, the possibility that Mr. Lustig

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1 could use such information to his benefit in his
2 trial.

3 THE COURT: I think what Mr. Allen is
4 talking about, Mr. Carty, is that do you understand
5 that what Mr. Jones has said is that he does not and
6 will not consent to revealing -- Mr. Lustig revealing
7 any confidential information that he learned while
8 representing -- while he represented Mr. Jones, do you
9 understand that that's what he said?

10 DEFENDANT CANTY: Yeah.

11 THE COURT: Anything further, Mr. Allen?

12 MR. ALLEN: I'm sorry, in light of that,
13 does Mr. Carty still knowingly waive any actual or
14 potential conflict?

15 THE COURT: Having answered that question,
16 do you still maintain the position that you will waive
17 any conflict that conceivably exists here?

18 MR. LUSTIG: Your Honor --

19 THE COURT: Mr. Lustig wants to say
20 something.

21 MR. LUSTIG: Your Honor, may I question my
22 client to make sure everything is clear?

23 THE COURT: Yes, sure.

24 MR. LUSTIG: Mr. Carty, you and I, from the
25 first day, discussed the fact that I represented

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1 Mr. Jones in 1983 and subsequently in 1987, but only
2 for the purpose of the arraignment, do you remember
3 that?

4 DEFENDANT CANTY: Right.

5 MR. LUSTIG: And you and I discussed the
6 fact that you in fact wrote a book about Mr. Jones?

7 DEFENDANT CANTY: Yeah.

8 MR. LUSTIG: And that we discussed the
9 contents of that book and the items in the book and
10 that you understood my position in that case, correct?

11 DEFENDANT CANTY: Yes.

12 MR. LUSTIG: All right. And subsequently,
13 you and Mr. Martin from Atlanta, your co-counsel,
14 discussed any possibilities of a conflict here in
15 terms of cross examination or otherwise, and you
16 agreed with me that -- and with Mr. Martin, that there
17 was -- would be no conflict and you wanted me to
18 proceed to represent you; is that right?

19 DEFENDANT CANTY: Yeah.

20 THE COURT: Thank you, Mr. Lustig.

21 Mr. Allen again?

22 MR. ALLEN: I believe we have a sufficient
23 record at this point, your Honor. I think both
24 Mr. Canty and Mr. Jones have acknowledged their
25 understanding of the issue and potential problem and

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1 that with the severance and with the statements of the
2 Defendants, we have the best possible record to move
3 forward.

4 THE COURT: All right. Anything further the
5 record should reflect from any party?

6 MR. GUREWITZ: Two brief matters unrelated
7 to the motions, your Honor. Number one, as I have on
8 other occasions, I'd like to ask the Court's
9 assistance in directing the marshals to return
10 Mr. Jones to Milan today.

11 THE COURT: I ask that you do that, and I
12 don't know who's going to speak for the marshals --
13 there you are, if there's any reason you can't do
14 that, I'd like to know about it. I hope it can be
15 done.

16 DEPUTY MARSHAL: I'll direct that to a
17 supervisor, sir.

18 THE COURT: Thank you.

19 MR. GUREWITZ: The other thing, your Honor,
20 is that I understand that we have additional motions
21 that are now scheduled for hearing on the 19th of
22 this month, and I understand the Government is
23 planning to file their responses by the end of
24 Wednesday this week?

25 THE COURT: Well, I certainly hope so; is

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1 that right?

2 MR. ALLEN: As do I, your Honor, yes. I
3 have some issues to run through outside the office and
4 then the responses will be filed.

5 THE COURT: All right. Thank you.

6 MR. LUSTIG: I have a question.

7 THE COURT: Oh, yes, Mr. Lustig.

8 MR. LUSTIG: First of all, I'd like to thank
9 the Government for all the attention. You're moving
10 to Ann Arbor?

11 THE COURT: Yes.

12 MR. LUSTIG: But we will still have a
13 Detroit jury?

14 THE COURT: Well, we'll try the case in Ann
15 Arbor and we'll have an Ann Arbor jury but that's --
16 it's not really much different from a Detroit jury --

17 MR. LUSTIG: It is because it takes --

18 THE COURT: It draws from Oakland, Wayne and
19 Macomb and I think from Washtenaw, too.

20 MR. LUSTIG: No, it draws from Jackson
21 there.

22 THE COURT: Jackson.

23 MR. LUSTIG: And in Detroit, it draws from
24 Huron -- Lake Huron -- or Port Huron and they also
25 eliminated another -- there's another county that's

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1 eliminated if you go to Ann Arbor. So I'm asking in
2 terms of our preparation for the trial, even though we
3 don't have a date, whether or not we will have a
4 Detroit jury, even though you're moving to Ann Arbor
5 and can we --

6 THE COURT: Well, I think the answer to
7 that, Mr. Lustig, is you won't unless you make a
8 motion and have the motion granted. I think if we
9 pick a jury in Ann Arbor, we'll do it with the wheel
10 that comes out there.

11 MR. LUSTIG: Okay. I appreciate that.

12 THE COURT: It's not -- I mean, if the Court
13 agrees, and I haven't even thought about that problem
14 obviously, but if the Court agrees that there's some
15 substance here and you should be entitled maybe to a
16 jury pool that you would get here if you tried the
17 case in this courtroom, then I don't see any reason
18 why we couldn't draw that kind of pool or I don't know
19 what the answer is to that.

20 MR. GUREWITZ: Your Honor, I'd like to have
21 the opportunity to revisit this issue at some time. I
22 think we've had some prior discussion about the
23 location of the trial, and there's been some talk
24 about the possibility of it occurring in Detroit, at
25 least for my client, because of a number of issues,

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1 some of which relate to logistics, and I'd like to be
2 able to revisit that.

3 THE COURT: Well, I -- you can address it.
4 If you can convince the Court that there is some
5 materiality to your point of view if you want it in
6 Detroit, I guess that I will consider that. But as of
7 right now, it's going to be in Ann Arbor. I know that
8 we discussed it, but I since then have talked with the
9 marshal service and people in Ann Arbor, the CSOs and
10 others, and I'm satisfied that from their point of
11 view that it's a better place to try the case than
12 Detroit is.

13 Now, if I were in the defense lawyer's
14 position and the thought Mr. Lustig has given about it
15 about where the pool comes from, I might have a
16 concern about that. I don't know. It's legitimate to
17 raise that concern, and it may very well be that you
18 could get me to agree that it should be a Detroit
19 drawn pool.

20 MR. GUREWITZ: We'll address that again.
21 Thank you.

22 THE COURT: Anything else? All right.
23 Thank you very much. The Court's in recess.
24 (The proceedings were concluded at
25 10:48 a.m.)

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C E R T I F I C A T I O N

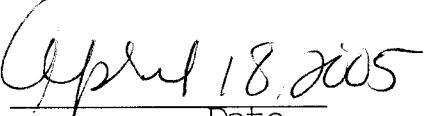
4 I, Andrea E. Wabeke, official court
5 reporter for the United States District Court,
6 Eastern District of Michigan, Southern Division,
7 appointed pursuant to the provisions of Title 28,
8 United States Code, Section 753, do hereby certify
9 that the foregoing is a correct transcript of the
10 proceedings in the above-entitled cause on the date
11 hereinbefore set forth.

12 I do further certify that the foregoing
13 transcript has been prepared by me or under my
14 direction.

15

16


Andrea E. Wabeke
Official Court Reporter
RMR, CRR, CSR


April 18, 2005

Date

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